MONTANA LEGISLATIVE HISTORY

Chapter 137 19 79

Bill H _____ S 39 Original bill & history ✓ C

H. Committee on Business & Ind			S. Committee on Business & Industry		
Hearing Date(s)	2-5	✓ C	Hearing Date(s)	1-22	✓ C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

CHAPTER NO. 137

SENATE BILL NO. 39

INTRODUCED BY HAZELBAKER, GOODOVER

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 6, 1979	Introduced and referred to Committee on Business and Industry
	On motion, Senators Hazelbaker and Goodover were added as authors to the prefiled bill.
January 22, 1979	Committee recommend bill do pass and be placed on Consent Calendar. Report adopted.
January 23, 1979	Printed and placed on members' desks.
January 24, 1979	Consent Calendar discussion.
January 25, 1979	Consent Calendar, do pass. Transmitted to second house.

IN THE HOUSE

January 26, 1979	Introduced and referred to Committee on Business and Industry.
March 1, 1979	Committee recommend bill be be concurred in as amended. Report adopted.
March 2, 1979	Second reading, concurred in.
March 5, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 6, 1979	Returned from second house. Concurred in as amended.
March 7, 1979	Second reading, amendments adopted.
March 8, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

SENATE BILL NO. 39

INTRODUCED BY _____

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115, 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506, MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-7-102, MCA, is amended to read:

"30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in ~~the general definition in Chapter 1 (30-1-201(15))~~.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this

chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 30-7-210, MCA, is amended to read:

"30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in ~~bloc~~ block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among

dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the

notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the

proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion."

Section 3. Section 30-9-105, MCA, is amended to read:

"30-9-105. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where when the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in the general definitions of Chapter 1 (30-1-201(15));

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also include includes the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in 30-3-104), or a security (defined in 30-8-102) or any other writing which evidences a right to the payment

c. money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.

"Consumer goods". 30-9-109(1).

"Contract right". 30-9-106.

"Equipment". 30-9-109(2).

"Farm products". 30-9-109(3).

"General intangibles". 30-9-106.

"Inventory". 30-9-109(4).

"Lien creditor". 30-9-301(3).

"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Contract for sale". 30-2-106.

"Holder in due course". 30-3-302.

"Note". 30-3-104.

"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the sum of $5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subsection (8) of this section,

registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a

broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or

the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection (8) of this section or is not qualified on the basis of such factors as training,

experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of

mental incompetance or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-11-115, MCA, is amended to read:

"30-11-115. Uniform Commercial Code overrides. The provisions of this ~~[part]~~ ~~shall~~ do not apply to exchanges subject to the Uniform Commercial Code."

Section 6. Section 30-12-1002, MCA, is amended to read:

"30-12-1002. Enforcement of part. The department of business regulation shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, tub tubs, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection."

Section 7. Section 30-13-133, MCA, is amended to read:

"30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his property interest in the same."

Section 8. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) Any A person who violates the terms of an injunction issued under 30-14-111 shall

forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction and the cause shall be continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) Any A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103."

Section 9. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the

provisions of 30-14-205 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

~~(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.~~

~~(3)~~(2) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, or to anyone either directly or indirectly engaged with him in such business, for a period of 1 year."

Section 10. Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer -- retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the

buyer any payments made by the buyer and any note of or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled."

Section 11. Repealer. Sections 67-1705, 84-2805 through 84-2812, and 85-201 through 85-208, R.C.M. 1947, are repealed.

-End-

46TH LEGISLATIVE SESSION

COMMITTEE ON BUSINESS & INDUSTRY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB # 9	1/6/79	1/27/79	1/27/79	1/27/79					
SB # 10	1/6/79	1/27/79	1/27/79	1/27/79					
SB # 39	1/22/79	1/22/79	1/22/79	1/22/79					
SB # 55	1/10/79	1/19/79	1/19/79			1/19/79			
SB # 62	1/19/79	1/31/79	1/31/79	1/31/79					
SB # 64	1/6/79	1/27/79	1/27/79			1/27/79			
SB # 70	1/5/79	1/25/79	1/31/79			1/31/79			
SB # 73	1/5/79	1/12/79	1/12/79			1/12/79			
SB # 80	1/10/79	1/27/79	1/27/79			1/27/79			
SB # 81	1/10/79	1/27/79	2/1/79			2/1/79			
SB # 82	1/10/79	1/23/79	1/29/79	1/29/79					
SB # 83	1/10/79	1/27/79	1/27/79	1/27/79					
SB # 84	1/10/79	1/24/79	1/31/79			1/31/79			
SB # 85	1/10/79	1/27/79	1/27/79	1/27/79					
SB # 86	1/10/79	1/27/79	2/10/79	2/10/79					
SB # 87	1/11/79	-----	TABLED						

Use a separate sheet for Senate, House Bills, and [illegible]

MINUTES OF THE MEETING
BUSINESS & INDUSTRY COMMITTEE
MONTANA STATE SENATE

January 22, 1979

The meeting of the Business and Industry Committee was called to order by Chairman Frank Hazelbaker on the above date in Room 404 ofthe State Capitol Building at 10:00 a.m.

ROLL CALL: All members were present.

Chairman Hazelbaker introduced Randy McDonald from the Legislative Council, and Mr. McDonald explained the changes proposed in Senate Bills 39 and 89. The changes primarily deal with clarification of language and grammar.

SENATE BILL 39: After Mr. McDonald's presentation, Chairman Hazelbaker asked if there were any questions or opposition to the bill. There was none.

Senator Blaylock moved that Senate Bill 39 DO PASS. Senator Dover seconded the motion. The motion was unanimously approved by the Committee.

Senator Goodover moved that this bill be placed on the Consent Calendar. Senator Dover seconded this motion.

Chairman Hazelbaker closed the hearing on Senate Bill 39.

SENATE BILL 89: Mr. McDonald explained proposed changes in this bill.

Senator Lowe asked Mr. McDonald what does share insurance insure? The question was turned over to Jeffrey Kirkland representing The Montana Credit Unions League. He said it insures share accounts up to $40,000.

There were no other questions.

Senator Dover moved we DO PASS Senate Bill 89. This was seconded by Senator Kolstad. The motion was unanimously approved by the Committee.

Senator Blaylock made a motion that Senate Bill 89 be placed on the Consent Calendar. Senator Peterson seconded the motion. All Concurred.

ADJOURN: There being no further business, the meeting was adjourned at 10:35 a.m.

FRANK HAZELBAKER, CHAIRMAN

BUSINESS & INDUSTRY COMMITTEE

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NAME	PRESENT	ABSENT	EXCUSED
Pat Goodover, Vice Chairman	✓		
Chet Blaylock	✓		
Harold Dover	✓		
Tom Hager	✓		
Allen Kolstad	✓		
Bill Lowe	✓		
John Mehrens	✓		
Bob Peterson	✓		
Pat Regan	✓		
Frank Hazelbaker, Chairman	✓		

NAME: Sandy McDonald DATE: Jan 22

ADDRESS: Legislative Council

PHONE: 3064

REPRESENTING WHOM? Code Commissioner

APPEARING ON WHICH PROPOSAL: SB 79, SB 89

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

January 22, 19 79

MR. President:

We, your committee on Business and Industry

having had under consideration Senate Bill No. 39

Respectfully report as follows: That Senate Bill No. 39

was unanimously passed and was unanimously placed on the Consent Calendar.

DO PASS

Senator Frank Hazelbaker Chairman.

STATE PUB. CO.
Helena, Mont.

BUSINESS & INDUSTRY COMMITTEE

NOTIFICATION SHEET

Bill #	Date Hearing	Committee Members	Sponsor	Chief Clerk	OUT	Received from Sgt. at Arms
SB 39	2/5	1/30	HAZELBAKER	1/30	3/1 AA BCI	1/29
SB 55	2/5	1/30	HAZELBAKER	1/30	3/1 BCI	1/29
SB 89	2/5	1/30	HAZELBAKER	1/30		1/29
HB 435	2/2	1/30	TROPILA	1/30	2/10 DNP	1/30
HB 441	2/5	1/30	BURNETT	1/30	2/7 AADP	1/30
HJR 16	2/1	1/30	GERKE	1/30	2/1 DP	1/30
HB 353	2/6	1/30	GERKE	1/30	2/17 table	1/30
HJR 17	2/9	2/3	QUILICI	2/3	2/13 DP	1/30
HB 448	2/7		COONEY	1/31	TABLE	1/30
HB 454	2/7	2/5	SPILKER	1/31	2/7 AADP	1/30
HB 474	2/9	2/5	JOHNSON	2/5	2/9 DNP	1/31
HB227	RETURNED TO COMMITTEE		MENAHAN		2/7 AADP	received back 1/31
HB 486	2/7	2/3	MOORE	1/31	2/8 DNP	2/1
HB 495	2/7	2/3	COONEY	2/3	2/7 AADP	2/1
HJR 20	2/7	2/3	TEAGUE	2/2	2/7 AADNP	2/1
HJR 21	2/8	2/3	BURNETT	2/2	2/10 AADP	2/1
HB 502	2/8	2/3	VINCENT	2/2	2/13 AADP	2/2
HB 503	2/8	2/3	BURNETT	2/2	2/10 DP	2/2
HB 511	2/8	2/3	HUENNEKENS	2/2	2/9 AADP	2/2
SB 117	3/1	2/23	HIMSEL	2/22	3/1 BCI	2/2
HB 526	2/9	2/5	NORDTVEDT	2/5	2/10 AADP	2/3
HB 529			DAILY		dead	2/3 fiscal note
SB 9	3/8	3/3	HAZELBAKER	3/1	3/8 BCI	2/3
SB 10	3/8	3/3	HAZELBAKER	3/1	3/8 BCI	2/3
SB64	3/8	3/3/	HAZELBAKER	3/1	3/8 BCI	2/3
SB 85	3/9	3/3	KELSTAD	3/1	3/9 BCI	2/3
SB 201	3/1	2/23	LOWE	2/22	bci	2/3

February 5 1979
Business & Industry
46 Legislative Session

The Business & Industry Committee of the House held a meeting on February 5, 1979 at 8:00 a.m. in room 437. The meeting was called to order by Chairman Joe Quilici. All members were present.

Chairman Quilici opened the meeting to a hearing on SB 55.

Senator Hazelbaker. sponsor, introduced the bill to the committee. The purpose of the bill is to clarify the application process for certificates of authorization for State-Chartered Banks.
Mike Kleinkopf from the Dept. of Business Regulations spoke in support of the bill. He said that the bill is simply a housekeeping measure that should not cause any problems.

Mr. Harold Pitts, representing the Montana Bankers Asso., testified in support of SB 55. Mr. Pitts said the bill would clear up a few misunderstandings.

There were no opponents to SB 55.

Rep. Nathe suggested that the bill should be amended so the opponents of the applications would be responsible to pay part of the expenses incurred. Mr. Pitts said that this would cause a great deal of complication because there is usually more than one opponent to each application and it would be difficult to decide how much each party would pay.

Rep. Hazelbaker closed on SB 55.

Hearing on SB 39 & SB 89...

Senator Hazelbaker, sponsor, turned the testimony over to Randy McDonald of the Legislative Council. Both bills are Code Commissioner Bills. Mr. McDonald explained the revisions and clarifications purposed in the bills. His testimony is documented from attached date on SB 39 and SB 89. (see attached)

There were no opponents on SB 39 or SB 89.

Senator Hazelbaker closed on SB 39 and SB 89.

The main concern of the committee on SB 39 was the elimination of the penalty section on page 18 lines 6 through 9. They felt there is a substantial differance between $1000 and $25,000. The $25,000 penalty was eliminated in the bill.

Hearing on HB 285...

Rep. Gene Ernst, sponsor, introduced the bill to the committee.

Opponents HB 441...

Mr. Dale Malom , Board of Horseracing, testified against HB 441. He stated that the 5 member board was very adaquate representation of the board. Presently one member must be a member of a fair board. He said that the fair board should be represented.

Dr. Joe Murphy, member of the Board of Horseracing, submitted written testimony to the committee. (see attached)

Mr. Holland , member of the board, gave testimony in opposition to the bill. He said that he was a member when it was a 3 member board and it was much more work for three members to travel all over Montana to attend horseracing meetings.

Mr. Barry Hjort Rocky MT Fair Asso., cuncurred with other opponents. He stated that the reason quarter horses are not allowed to race on certain tracks is that the tracks are not approved by the American Quarter Horse Asso. He said that the section in the bill stating that no more than 9 races per day on any one breed of horse could be run would cause the revenue to go down a great deal.

Mr. Bob Glasgou stated that the race tracks that are not approved for quarter horse racing should not have to race quarter horses. The straight away requirements are 350 yards for quarter horse racing. This is very expensive if the track has to do construction to make the track adequate.

Bill Nooney, representing the Western Mt. Fair in Missoula, testified against the bill. He said the bill would cut out of state competition and therefore the revenue would be cut.

See witness sheet for others present.

Rep. Gerke spoke on HB 441, stating that the bill is poorly written and discriminatory besides not being economical. He said that the committee should ask for a fiscal note.

The committee asked questions from the witness at this time. Following a extensive question session, Rep. Burnett closed on HB 441.

Executive Action....

SB 39

Rep. Cooney made a motion that SB 39 BE CONCURRED IN, but he withdrew his motion after several members indicated that they

Executive Action Cont...

would like more time to research the penalty section.

Chairman Quilici said that the committee could delay action until more research could be done on this matter.

HB 285...

Rep. Frates made a motion that HB 285 DO NOT PASS. The motion was seconded by Rep. Robbins. Following discussion from the committee a vote was taken and carried 16-2 with one absent that HB 285 DO NOT PASS. Rep. Ellerd and Nathe voted no.

SB 89

Rep. Cooney made a motion that SB 89 BE CONCURRED IN. The motion was seconded by Rep. Metcalf. Following discussion a vote was taken and carried unanimously that SB 89 BE CONCURRED IN.

HB 441

Rep. Stobie made a motion that HB 441 DO NOT PASS. Rep. Meyer seconded the motion. After discussion from the committee it was decided that the bill needed more consideration. Rep. Robbins said that he would like to have some time to call his local members of the fair board and get their views. Rep. Stobie withdrew his motion that HB 441 DO NOT PASS. Chairman Quilici said that action would be delayed until Wednesday Feb. 7.

No action was taken on SB 55 at this time.

A motion was made and seconded to adjourn.

Meeting adjourned at 11:25 a.m.

Respectfully submitted,

JQ:cm

JOE QUILICI, Chairman

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LC 0008

1979 Legislature
Code Commissioner Bill - Summary

SENATE Bill No. 39

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 30-7-102. Grammatical change - makes the section consistent with the uniform act (U.C.C.).

Section 2. 30-7-210. "block" is the correct spelling and is used in the uniform act.

Section 3. 30-9-105. "includes" is grammatically correct and consistent within the statute. Makes the section consistent with the uniform act.

Section 4. 30-10-201. The amendment makes it clear that a broker-dealer is required to file a financial statement.

Section 5. 30-11-115. "part" was bracketed in recodification because it is technically an incorrect reference. In recodification, Chapter 5 and Chapter 1 of Title 74, R.C.M. 1947, were placed in part 6 of Chapter 11, Title 30, MCA.

Chapter 5 dealt with exchanges, and Chapter 1 dealt with sales and sales agreements. In the statute "part" was "chapter" and referred to Chapter 5 of Title 74, R.C.M. 1947. The word "part" now refers to the former Chapter 1 of Title 74, R.C.M. 1947, as well as to the former Chapter 5 of Title 74, R.C.M. 1947.

Since 30-11-115 limits its application to exchanges, there is no substantive change by using "part".

Section 6. 30-12-1002. Amendment allows inspection of tubes of paint.

Section 7. 30-13-133. The word "property" is changed to "interest" which is the more precise term.

Section 8. 30-14-142. Addition of "shall be" makes the statute's meaning clear. Also makes minor grammatical changes.

Section 9. 30-14-224. The amendment eliminates confusion about the double penalty provision in subsections (1) and (2) for a violation of 30-14-205.

Section 10. 30-14-506. The amendment makes the meaning of the statute clear - that all evidence of indebtedness is to be returned to the buyer.

Section 11. 67-1705, R.C.M. 1947, is not necessary since the subject is covered by 30-2-402 in the Uniform Commercial Code.

84-2805 through 84-2812, R.C.M. 1947. These sections relating to trading stamps were declared unconstitutional by Garden Spot Market, Inc. v. Byrne, 141 Mont. 382 (1963).

85-201 through 85-208, R.C.M. 1947. These sections comprising the Fair Trade Act of 1937 were declared unconstitutional by Union Carbide and Carbon Corp. v. Skaggs Drug Center, Inc., 139 Mont. 15 (1961).

SENATE BILL NO. 39

INTRODUCED BY HAZELBAKER, GOODOVER

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 30-7-102, 30-7-210, 30-9-105, 30-10-201, 30-11-115, 30-12-1002, 30-13-133, 30-14-142, 30-14-224, AND 30-14-506, MCA; AND REPEALING SECTIONS 67-1705, 84-2805 THROUGH 84-2812, AND 85-201 THROUGH 85-208, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-7-102, MCA, is amended to read:

"30-7-102. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires:

(a) "Bailee" means the person who by a warehouse receipt, bill of lading or other document of title acknowledges possession of goods and contracts to deliver them.

(b) "Consignee" means the person named in a bill to whom or to whose order the bill promises delivery.

(c) "Consignor" means the person named in a bill as the person from whom the goods have been received for shipment.

(d) "Delivery order" means a written order to deliver goods directed to a warehouseman, carrier or other person who in the ordinary course of business issues warehouse receipts or bills of lading.

(e) "Document" means document of title as defined in ~~the general definition in Chapter 1 (30-1-201(15))~~.

(f) "Goods" means all things which are treated as movable for the purposes of a contract of storage or transportation.

(g) "Issuer" means a bailee who issues a document except that in relation to an unaccepted delivery order it means the person who orders the possessor of goods to deliver. Issuer includes any person for whom an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, notwithstanding that the issuer received no goods or that the goods were misdescribed or that in any other respect the agent or employee violated his instructions.

(h) "Warehouseman" is a person engaged in the business of storing goods for hire.

(2) Other definitions applying to this chapter or to specified parts thereof, and the sections in which they appear are:

"Duly negotiate". 30-7-501.

"Person entitled under the document". 30-7-403(4).

(3) Definitions in other chapters applying to this

SENATE CONSENT CALENDAR
HOUSE REFERENCE BILL

chapter and the sections in which they appear are:

"Contract for sale". 30-2-106.

"Overseas". 30-2-323.

"Receipt" of goods. 30-2-103.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 30-7-210, MCA, is amended to read:

"30-7-210. Enforcement of warehouseman's lien. (1) Except as provided in subsection (2), a warehouseman's lien may be enforced by public or private sale of the goods in ~~bloc~~ block or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. ~~Such~~ The notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouseman is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the warehouseman either sells the goods in the usual manner in any recognized market therefor, or if he sells at the price current in such market at the time of his sale, or if he has otherwise sold in conformity with commercially reasonable practices among

dealers in the type of goods sold, he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to insure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

(2) A warehouseman's lien on goods other than goods stored by a merchant in the course of his business may be enforced only as follows:

(a) All persons known to claim an interest in the goods must be notified.

(b) The notification must be delivered in person or sent by registered or certified letter to the last known address of any person to be notified.

(c) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(d) The sale must conform to the terms of the notification.

(e) The sale must be held at the nearest suitable place to that where the goods are held or stored.

(f) After the expiration of the time given in the

notification, an advertisement of the sale must be published once a week for 2 weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account they are being held, and the time and place of the sale. The sale must take place at least 15 days after the first publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(3) Before any sale pursuant to this section any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred under this section. In that event the goods must not be sold, but must be retained by the warehouseman subject to the terms of the receipt and this chapter.

(4) The warehouseman may buy at any public sale pursuant to this section.

(5) A purchaser in good faith of goods sold to enforce a warehouseman's lien takes the goods free of any rights of persons against whom the lien was valid, despite noncompliance by the warehouseman with the requirements of this section.

(6) The warehouseman may satisfy his lien from the

proceeds of any sale pursuant to this section but must hold the balance, if any, for delivery on demand to any person to whom he would have been bound to deliver the goods.

(7) The rights provided by this section shall be in addition to all other rights allowed by law to a creditor against his debtor.

(8) Where a lien is on goods stored by a merchant in the course of his business the lien may be enforced in accordance with either subsection (1) or (2).

(9) The warehouseman is liable for damages caused by failure to comply with the requirements for sale under this section and in case of willful violation is liable for conversion."

Section 3. Section 30-9-105, MCA, is amended to read:

"30-9-105. Definitions and index of definitions. (1) In this chapter unless the context otherwise requires:

(a) "Account debtor" means the person who is obligated on an account, chattel paper, contract right or general intangible;

(b) "Chattel paper" means a writing or writings which evidence both a monetary obligation and a security interest in or a lease of specific goods. When a transaction is evidenced both by such a security agreement or a lease and by an instrument or a series of instruments, the group of writings taken together constitutes chattel paper;

(c) "Collateral" means the property subject to a security interest, and includes accounts, contract rights and chattel paper which have been sold;

(d) "Debtor" means the person who owes payment or other performance of the obligation secured, whether or not he owns or has rights in the collateral, and includes the seller of accounts, contract rights or chattel paper. Where When the debtor and the owner of the collateral are not the same person, the term "debtor" means the owner of the collateral in any provision of the chapter dealing with the collateral, the obligor in any provision dealing with the obligation, and may include both where the context so requires;

(e) "Document" means document of title as defined in ~~the general definitions of Chapter 1 (30-1-201(15))~~;

(f) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (30-9-313), but does not include money, documents, instruments, accounts, chattel paper, general intangibles, contract rights and other things in action. "Goods" also ~~include~~ includes the unborn young of animals and growing crops;

(g) "Instrument" means a negotiable instrument (defined in 30-3-104), or a security (defined in 30-8-102) or any other writing which evidences a right to the payment

of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary endorsement or assignment;

(h) "Security agreement" means an agreement which creates or provides for a security interest;

(i) "Secured party" means a lender, seller or other person in whose favor there is a security interest, including a person to whom accounts, contract rights or chattel paper have been sold. When the holders of obligations issued under an indenture of trust, equipment trust agreement or the like are represented by a trustee or other person, the representative is the secured party.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Account". 30-9-106.

"Consumer goods". 30-9-109(1).

"Contract right". 30-9-106.

"Equipment". 30-9-109(2).

"Farm products". 30-9-109(3).

"General intangibles". 30-9-106.

"Inventory". 30-9-109(4).

"Lien creditor". 30-9-301(3).

"Proceeds". 30-9-306(1).

"Purchase money security interest". 30-9-107.

(3) The following definitions in other chapters apply to this chapter:

"Check". 30-3-104.

"Contract for sale". 30-2-106.

"Holder in due course". 30-3-302.

"Note". 30-3-104.

"Sale". 30-2-106.

(4) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 4. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 30-10-105, unless he is registered under parts 1 through 3 of this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under parts 1 through 3 of this chapter;

(b) he is registered as a broker-dealer under parts 1 through 3 of this chapter; or

(c) his only clients in this state are investment companies, as defined in the Investment Company Act of 1940, or insurance companies.

(2) A broker-dealer or a salesman, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in the sum of $5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subsection (8) of this section,

registration becomes effective at noon of the 30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. The effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March 1 following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee, and, in the case of a

broker-dealer, by filing a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or

the substantial equivalent of those terms as defined in parts 1 through 3 of this chapter or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934 or is the subject of a United States post office fraud order, but:

(i) the commissioner may not institute a revocation or suspension proceeding under this subsection (f) more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this subsection (f) on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (h) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under subsection (8) of this section or is not qualified on the basis of such factors as training,

experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (j), and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subsection (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman or is subject to an adjudication of

mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 5. Section 30-11-115, MCA, is amended to read:

"30-11-115. Uniform Commercial Code overrides. The provisions of this ~~[part] shall~~ do not apply to exchanges subject to the Uniform Commercial Code."

Section 6. Section 30-12-1002, MCA, is amended to read:

"30-12-1002. Enforcement of part. The department of business regulation shall enforce this part. The department shall have access to all places of business, factories, stores, and buildings used for the manufacture or sale of paints or other products described in 30-12-1001. The department may purchase and open any package, can, jar, ~~tub~~ tube, or other receptacle containing any of the articles described in 30-12-1001 and found during an inspection."

Section 7. Section 30-13-133, MCA, is amended to read:

"30-13-133. Transfer. The owner of any product of the mind or of any representation or expression thereof may transfer his ~~property~~ interest in the same."

Section 8. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) ~~Any~~ A person who violates the terms of an injunction issued under 30-14-111 shall

forfeit and pay to the state a civil penalty of not more than $10,000 per violation. For the purposes of this section, the district court issuing an injunction retains jurisdiction and the cause shall be continued, and in such cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In any an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil penalty of not more than $500 per violation.

(3) Any A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than $2,000, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of 30-14-103."

Section 9. Section 30-14-224, MCA, is amended to read:

"30-14-224. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the

provisions of ~~30-14-205~~ 30-14-206 through 30-14-218 is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months, or both.

~~(2) A violation of 30-14-205 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000, or both.~~

(2) A VIOLATION OF 30-14-205 IS PUNISHABLE BY IMPRISONMENT IN THE COUNTY JAIL FOR A PERIOD NOT LESS THAN 24 HOURS OR MORE THAN 1 YEAR OR BY FINE NOT EXCEEDING $25,000, OR BOTH.

~~(3)~~ (2)(3) When there is a violation of 30-14-216, in addition to the penalty specified in subsection (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, or to anyone either directly or indirectly engaged with him in such business, for a period of 1 year."

Section 10. Section 30-14-506, MCA, is amended to read:

"30-14-506. Repayment to buyer -- retention of goods by buyer. (1) Except as provided in this section, within 10 days after a personal solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of or other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the buyer is successful in his action therefor, the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section, the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled."

Section 11. Repealer. Sections 67-1705, 84-2805 through 84-2812, and 85-201 through 85-208, R.C.M. 1947,

are repealed.

-End-